

UNITED STATES BANKRUPTCY COURT

EASTERN DISTRICT OF VIRGINIA

NORFOLK DIVISION

IN RE:

PATRICK MAURICE POOLE

Debtor

Shermaunda Poole

Codebtor

BCN #: 17-74048-SCS

Chapter: 13

NOTICE OF MOTION AND HEARING

Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have one in this bankruptcy case. If you do not have an attorney, you may wish to consult one.

If you do not wish the Court to grant the relief sought in this motion, or if you want the Court to consider your views on this motion, then within fourteen (14) days from the date of service of this motion, you must file a written response explaining your position with the Court at the following address: Clerk of Court, United States Bankruptcy Court, 600 Granby Street, Norfolk, VA 23510, and serve a copy on the Movant. Unless a written response is filed and served within this fourteen day period, the Court may deem any opposition waived, treat the motion as conceded, and issue an Order granting the requested relief without further notice or hearing.

If you mail your response to the Court for filing, you must mail it early enough so the Court will receive it on or before the expiration of the fourteen day period.

You may attend the preliminary hearing scheduled to be held on: December 21, 2017 at 9:30 AM in Courtroom 1, 4TH Floor, United States Bankruptcy Court, 600 Granby Street, Norfolk, VA 23510.

If you or your attorney do not take these steps, the Court may decide that you do not oppose the relief sought in the motion and may enter an Order granting the requested relief.

SHAPIRO & BROWN, LLP
ATTORNEYS FOR THE MOVANT

Dated: November 22, 2017

/s/ Malcolm B. Savage, III
BY: Gregory N. Britto, Esquire
VSB #23476
William M. Savage, Esquire
VSB #26155
Malcolm B. Savage, III, Esquire
VSB #91050
Thomas J. Gartner, Esquire
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Chesapeake, Virginia 23320
(703) 449-5800
VABECF@logs.com

I certify that I have this 22nd day of November, 2017, electronically transmitted and/or mailed by first class mail, postage pre-paid, a true copy of the foregoing Notice of Motion and Hearing to the following:

Kenneth E Goolsby
Alliance Legal Group
133 Mount Pleasant Road
Chesapeake, VA 23322

R. Clinton Stackhouse, Jr.
Chapter 12/13 Trustee
7021 Harbour View Boulevard, Suite 101
Suffolk, VA 23435

Patrick Maurice Poole
1312 Jacob Court
Chesapeake, VA 23324

Shermaunda Poole
1312 Jacob Court
Chesapeake, VA 23324

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Leonard C. Tengco, Esquire
VSB #76395

United States Bankruptcy Court
Eastern District of Virginia
Norfolk Division

In Re:
Patrick Maurice Poole
Debtor

BCN#: 17-74048-SCS
Chapter: 13

HSBC Bank USA, National Association as
Indenture Trustee for First NLC Trust 2005-
3, Mortgage-Backed Notes, 2005-3
Movant/Secured Creditor,

v.

Patrick Maurice Poole
Debtor
Shermaunda Poole
Codebtor

and

R. Clinton Stackhouse, Jr.
Trustee
Respondents

Motion for Order Granting Relief From
Automatic Stay and Codebtor Stay for Bad
Faith in Filing for Injunction Preventing
Subsequent Filings as to Movant as to real
property with the address of 1312 Jacob
Court, Chesapeake, VA 23324

HSBC Bank USA, National Association as Indenture Trustee for First NLC Trust 2005-3,
Mortgage-Backed Notes, 2005-3, alleges as follows:

1. The bankruptcy court has jurisdiction over this contested matter pursuant to 28 U.S.C. § 157 and § 1334 and 11 U.S.C. § 362; Federal Rule of Bankruptcy Procedure 9014; 11 U.S.C. § 1301(C)(1) or (3) and Local Bankruptcy Rule 4001(a)-1.

2. The above named Debtor filed a Chapter 13 Petition in Bankruptcy with this Court on November 13, 2017.

3. R. Clinton Stackhouse, Jr. has been appointed by this Court as the Chapter 13 Trustee in this instant Bankruptcy proceeding.

4. Movant, HSBC Bank USA, National Association as Indenture Trustee for First NLC Trust 2005-3, Mortgage-Backed Notes, 2005-3, is the current holder of the subject note secured by the subject Deed of Trust. The original deed of trust holder was Homeland Capital Group, LLC, with Mortgage Electronic Registration Systems, Inc., as beneficiary, solely as nominee for the Lender. The beneficial interest in the aforesaid Deed of Trust has been assigned

to the Movant as evidenced by the Assignment dated June 15, 2011. The note was originated by Homeland Capital Group, LLC who endorsed the note to First Greensboro Home Equity, INC. who endorsed the note in blank. The terms of the debt agreement were amended by a loan modification agreement entered into by and between Wells Fargo Bank, N.A. d/b/a America's Servicing Company and Patrick Poole and Shermaunda Poole dated December 17, 2009. A copy of the Assignment, Deed of Trust, Note and Loan Modification are attached hereto and incorporated herein by reference.

5. The subject Deed of Trust secures a parcel of real property (hereinafter "the Property") with the address of 1312 Jacob Court, Chesapeake, VA 23324 and more particularly described in the Deed of Trust dated August 24, 2005 and recorded as Deed Book 6167, Page 0495 among the land records of the said city/county, as:

ALL THAT certain lot, piece or parcel of land, with the buildings and improvements thereon, situate, lying and being in the City of Chesapeake, Virginia and being known, numbered and designated as lot 15, as shown on that certain plat entitled, "Amended Subdivision plat of SPENCER FARM, (D.B. 4506, PG. 505), (M.B. 144, PGS, 111-111A), South Norfolk Borough, Chesapeake, Virginia" dated January 30, 2003, made by Hassell & Folkes, P.C., Engineers-Surveyors-Planners, and duly recorded in the Clerk's Office of the Circuit Court of the City of Chesapeake, Virginia in Map Book 144, at page 131 and 131A.

6. Debtor executed a promissory note secured by a mortgage or Deed of Trust. The promissory note is either made payable to Creditor or has been duly endorsed. Creditor, directly or through an agent, has possession of the promissory note. Creditor is the original mortgagee or beneficiary or assignee of the mortgage or Deed of Trust. See Attached Exhibits.

7. Movant is informed and believes, and, based upon such information and belief, alleges that title to the subject Property is currently vested in the name of the Debtor and the Co-Debtor.

8. Movant has elected to initiate foreclosure proceedings on the Property with respect to the subject Trust Deed, but is prevented by the Automatic Stays from going forward with these proceedings.

9. The instant Bankruptcy petition was filed in bad faith and solely to delay Movant's efforts to foreclose on its security interest in the above described property. In support thereof, Movant further states that the Debtor has filed the following bankruptcy petitions with the following results:

a.) Chapter 13 bankruptcy filed September 24, 2012 in the Eastern District of Virginia (Norfolk)

Case number: 12-74077-FJS

Filed by: Patrick Maurice Poole

Foreclosure Sale: September 26, 2012

Total Debt: \$293,015.43

Result: dismissed for other reason December 14, 2012.

b.) Chapter 13 bankruptcy filed January 21, 2014 in the Eastern District of Virginia (Norfolk)

Case number: 14-70236-FJS

Filed by: Patrick Maurice Poole

Foreclosure Sale: January 22, 2014

Total Debt: \$317,643.44

Result: dismissed for failure to make plan payments October 23, 2014.

c.) Chapter 13 bankruptcy filed April 15, 2015 in the Eastern District of Virginia (Norfolk)

Case number: 15-71240-FJS

Filed by: Patrick Maurice Poole

Foreclosure Sale: April 16, 2015

Total Debt: \$337,336.39

Result: dismissed for failure to make plan payments May 18, 2017.

d.) Chapter 13 bankruptcy filed November 13, 2017 in the Eastern District of Virginia (Norfolk)

Case number: 17-74048-SCS

Filed by: Patrick Maurice Poole

Foreclosure Sale: November 16, 2017

Total Debt: \$372,572.51

Result: Open and Pending

10. The series of four (4) bankruptcy filings indicate lack of “good faith” on the part of Debtor, constitutes a substantial abuse of the Bankruptcy Code, and is cause to grant the relief prayed for in the instant bankruptcy case.

11. The Debtor’s pattern of successive bankruptcy filings indicates “bad faith” and an attempt to forestall any foreclosure actions undertaken by Movant. In the Debtor’s first bankruptcy, a chapter 13, was dismissed for other reason December 14, 2012. The Debtor’s second bankruptcy, a chapter 13, was dismissed for failure to make plan payments October 23, 2014. The Debtor’s third bankruptcy, a chapter 13, was dismissed for failure to make plan payments May 18, 2017.

12. The Debtor is in default with regard to payments which have become due under the terms of the aforementioned note and Deed of Trust. As of November 17, 2017, the loan is contractually due for May 1, 2011.

As of November 17, 2017, the Debtor is due for:

- o 33 monthly payments of \$1,621.84 each which were to be paid directly to Movant;
- o 15 monthly payments of \$1,617.46 each which were to be paid directly to Movant;
- o 11 monthly payments of \$1,620.75 each which were to be paid directly to Movant;
- o 11 monthly payments of \$1,622.25 each which were to be paid directly to Movant;
- o 9 monthly payments of \$1,619.48 each which were to be paid directly to Movant;
- o Total of \$128,030.94

13. As of November 17, 2017, the unpaid principal balance on the said note is \$253,802.82.

14. That the value of the Property is 245,300.00 based on the county's tax assessed value of the Property. Movant is informed and believes, and, based upon such information and belief, alleges that the Debtor has little or no equity in the property.

15. Movant is informed and believes, and, based upon such information and belief, alleges that absent the Court's Order allowing the Movant to proceed with the pending foreclosure, Movant's security will be significantly jeopardized and/or destroyed.

16. Continuation of the automatic stay of 11 U.S.C. § 362(a) as well as the Codebtor stay of 11 U.S.C. § 1301 will work real and irreparable harm and deprive the Movant of the adequate protection to which it is entitled under 11 U.S.C. § 362 and 11 U.S.C. § 1301 due to the aforementioned facts.

17. That the Movant has requested that the Court hear this matter on December 21, 2017 at 9:30am.

WHEREFORE, the Debtor having forsaken the legitimate use of the bankruptcy process, the Movant prays that the court enter in an order granting In Rem Relief from the Automatic Stay of 11 USC § 362(a), and ordering that a subsequent filing by the Debtor or any party to which he/she may transfer the property, will not create a stay as to the property and will be ineffective as to the Movant for two years from the entry of this Order. Movant further requests that the 14-day waiting period imposed by F.R.B.P. 4001(a)(3) be waived, and further ordering that the Movant may proceed to perform any and all acts necessary in order to obtain lawful possession of the property subsequent to any foreclosure sale. Movant further requests attorneys' fees and costs, and such further relief as the Court and equity deem justifiable.

SHAPIRO & BROWN, LLP
ATTORNEYS FOR THE MOVANT

Dated: November 22, 2017

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Chesapeake, Virginia 23320
(703) 449-5800
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Certificate of Service

I certify that I have this 22nd day of November, 2017, electronically transmitted and/or mailed by first class mail, true copies of the Motion for Order Granting Relief From Automatic Stay and Codebtor Stay for Bad Faith in Filing for Injunction Preventing Subsequent Filings as to Movant to each party required to receive notice.

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